

EMERGING LEGAL ISSUES IN HOSPITAL MANAGEMENT

By

Prof. (Dr) Mukund Sarda*

(1) In a recent incident¹ at a Government hospital in Kondapur in Hyderabad of the death of a new born baby after a hospital nurse and ward boy performed the complicated delivery is shocking and reveals the sad state of affairs in the area of hospital management. The reason for the nurse and the ward boy in taking this most dangerous initiative appeared to be that they did not wish to disturb their sleeping duty doctor. Instances such as these, shake the confidence of the public in the medical profession that too, of doctors in Government hospital. The time is now ripe to study some of the major happenings in Health care institutions, giving rise to most serious legal issues in the hospital administration.

(2) There has been increasing incidents of missing of new-born babies. How the babies can be found missing in hospital makes one to wonder that the health-care institutions can no longer be depended upon the safety and security of young babies. Instances such as these require a careful and thorough investigation. The following steps may be taken to prevent such incidents:-

- (i) The new-born babies must be kept under strict vigilance of a competent staff who are trust-worthy. The movement of babies must be noted in a register and maintained by the concerned duty doctor. No outsider should be allowed to enter the rooms, where the babies are kept.

Even near relatives should be allowed accompanied by a staff of watch and ward and not permitted to remain after seeing the babies. All entries to this room should be locked and only one door must be kept for entry and exit. The room should be heavily guarded throughout (24) hours of stay and until they are discharged. The hospital staff of this unit should be asked to furnish heavy security deposits to be forfeited, when any act of negligence of their part occurs. The service contract must make suitable provision in this regard. The duty doctor should attend to their duties without any time of breach. The services of night duty doctors who are 'sleeping doctors' should be dispensed with, after due disciplinary action is taken as per rules.

(3) Some instances like substitution of male babies by females have taken place in some parts of the Country. This may be motivated by persons who are not able to beget male children and are keen in getting their female babies substituted by male with the help of the hospital staff or by other means. The need to evolve strict procedures and prevent such incidents has become the prime need of the hour. The following suggestions are made:-

- (a) The doctor attending to the duties in delivery cases should remain in the theatre throughout the period of delivery and the moment the child is delivered note immediately the sex of the child in a register to be specially maintained for the purpose together with the names of the parents and their addresses, the date and the exact time of delivery. A tag should be tied to the hand of the baby with all these details.

* Professor & Dean, Bharati Vidya Peet University New Law College, Pune.

1. See the report of times of India published on 22.7.2011 in its Hyderabad Edition.

Thereafter the movement of the child should be noted and in no case any outsider should be allowed to see the baby except the near relatives after recording their presence in a register with full details together with the date and time of the visit. The child should be under the strict vigilance of the competent hospital staff and security personnel, who must be able to prevent the child from being taken by anybody, until the discharge of the patient takes place. It is also important to note in a common register the delivery of all babies on a particular date together with timings with all details, which are recorded by the doctor on duty. It will then facilitate, which baby is substituted and provide necessary identification to trace the baby and for its restoration to the parents.

- (b) As a precautionary measure all hospitals must be prevented from adopting any illegal methods of sex determination of the child in the womb under the law in force.

(4) Frequent instances of illegal abortion cases occur which require strict handling of such cases by enforcing the existing law. Hospitals indulging in such cases should be de-registered and shall not be allowed to continue. Frequent visits of the State Medical Staff may curb this menace to a great extent.

(5) Whenever the treatment or operation fails to produce positive results, the relatives or friends of the patient with the assistance of outsiders and in some cases by MLAs or MLCs attack the hospital staff causing injuries including fatal ones. There have been instances of setting fire to the hospital building or destroying properties of the hospitals, causing heavy loss. In an emotionally surcharged

atmosphere, the party concerned is not even prepared to listen to the version of the hospital. Instances such as these, prevent health care institutions from performing their legitimate duties and consequently the patients undergoing treatment in hospital suffer badly, even leading to their death on account of lack of timely medical care. Since the hospitals have been regarded as coming within the definition of 'industry' within the meaning of Industrial Disputes Act, 1947, there is an imperative need that hospitals should be provided adequate Central Industrial Security force to guard the hospitals from such happenings, including prevention of offences or illegal activities. The expenditure on this account should be shared partly by the appropriate Govt. and the concerned hospital. All medical reports concerning the treatment of cases should be kept correctly and properly duly authenticated by the chief of the hospital concerned to rebut the charge of negligence or other charges against the hospital staff. Entry should be prohibited to all outsiders, at the entry point itself by CISE, except where due permission is granted by the hospital concerned. However, entry should be screened as in the case of Airports.

(6) It has been noticed that strikes by doctors and other hospital staff is on the increase in many parts of the Country. The cause of the strike may be due to variety of factors like unrest in hospitals such as, lack of proper pay service conditions etc., Hospital staff going on strike leads to many unpleasant consequences, even where no compensation can bring to life a dead. Disputes have arisen leading to undesirable consequences, exposing the hospitals to endless litigation. Strikes being banned in hospital, though a step in the right direction, but it should be accompanied by an appropriate machinery to deal expeditiously with the

demand of the hospital staff. There is a case to enact a law "Hospital (Disputes & Maintenance of Peace) Act, which must set up suitable statutory panels to quickly resolve the disputes. Health-care institutions cannot be compared with any of the industrial enterprises, as the loss arising in the latter could be made up, but in the former when death occurs, it cannot be compensated adequately. Hospital staff can file their claims, complaints or grievances before the panels, which should be able to settle within a time frame of two or three weeks. No strike should be allowed, as it causes irreparable loss to people as well, being contrary to oath taken by the medical practitioners, at the time of their registration with Medical Council of India, to the effect that their prime duty is to save a human life. Strikes will no doubt be contrary to the oath taken.

(7) Hospitals become bailees, when goods or properties are entrusted to the care of hospital staff. Even in certain situations, as finder of lost property, they become bailee on the basis of a 'quasi-contractual liability. These cases are on the increase presently. The need to evolve a suitable measure to deal with such cases is the emergent requirement. The following suggestions are made:-

- (i) All the belongings of the people entering the hospitals must be duly checked and kept at a suitable place at the entry point itself under lock and key. Only goods such as food or dress materials for the patients should be allowed only to those, who have been authorized by the hospital.
- (ii) All the particulars of goods, etc., together with the name, address, cell/phone numbers should be entered in a register maintained for the purpose. The signature of the person concerned should be taken

in the register showing the date and time of entry.

- (iii) A token prepared in duplicate must be kept ready for use.

A token should be attached to the goods or bags and other should be given to the person concerned, who will be allowed to take back the goods/materials after surrendering the token, as in the practice adopted by super bazaar. In case of a person failing to take back the goods or articles, he may be informed to collect within 48 hours, failing which the hospital will no longer be liable for the goods/articles. At the time of taking back, the person should also be required to state that he has received all the items in good condition or in the condition in which he had deposited the goods. Steps, such as these will not expose the hospitals to any type of litigation on this account.

(8) After the incidents like Taj Hotel in Mumbai, the terrorist activities taking place in hospitals cannot be ruled out. The terrorist are targeting only crowded public places and hospital is no doubt a place of this description. Suitable prevention steps should be taken in this regard. Metal detectors or Bomb squad may be kept in hospitals. The presence of CISF Staff will be an adequate protection. Entry into hospitals must be through check-in as in the case of airports.

(9) In conclusion, it may be stated thus:-

- (a) Health care institutions should provide safety and security to newborn babies against either being kidnapped or substituted;
- (b) Steps to be taken to prevent illegal abortion. Hospitals indulging in such acts should be de-registered and shall not be allowed to continue;

- (c) Central Industry Security staff should be provided to prevent attacks on hospital staff by outsiders and to prevent illegal activities;
- (d) Entry into the hospital should be screened as in the case of airports;
- (e) Hospitals as a bailee requires a new system of handling customers baggage's etc., Experience of super bazaars may be taken in this regard;
- (f) A new law Hospital (Disputes & Maintenance and Peace) Act to be enacted to provide a suitable and effective machinery to deal with disputes in hospitals. Strikes should be absolutely banned as protection of human life ranks as the highest duty, when considered from other issues; and
- (g) Metal detectors, bomb-squads must be kept in all hospitals to prevent any possible terrorist activity.

THEORETICAL PERSPECTIVE OF COMMUNALISM AND SECULARISM

By

Ishita Chatterjee*

India is a sovereign, socialist, secular, democratic republic as system of government. Indian constitution stressed "We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens; Justice-social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them

all; Fraternity assuring the dignity of the individual and unit and integrity of the Nation; in our Constituent Assembly this twenty sixth day of November 1949, do hereby, adopt, enact and give to ourselves this constitution". Dr. B.R. Ambedkar, Chairman of the Drafting Committee speaking on the Hindu Code Bill in 1951 in Parliament explained the secular concept of democracy as follows- 'It (Secular democracy) does not mean that we shall not taken into consideration the religious sentiments of the people. All that a secular state means that this Parliament shall not be competent to impose any particular religion upon the rest of the people. This is the only limitation that the constitution reorganization'. It is emphasized secular state of Indian democracy. Thus the state will remain secular as long as its citizens carry out their responsibility of self-government, in which they are aided because India has a political tradition that favours Secularism. Indian Constitution guarantees to all its citizens freedom to profess, practice and propagate religion and assures strict impartiality on the part of the state and its institution towards all religious.

The principles of unity and secularism are under threat due to rise in communalism and casteism. These two elements are powerful means in the hands of political parties and politicians to gain power in the Government. Many of the parties are dividing the Indians on the basis of community, caste and religions to get political power. The present study is made to analyze the impact communalism and casteism as challenges to the secular Indian democracy.

Communalism is a powerful force in India. The challenges of casteism, communalism and religious fundamentalism involving separatism in India are the major threats to our Secular

* Lecturer, Faculty of Law, University of Allahabad, Allahabad.